

WSDA Guidance on Complete Wood Destroying Organism Inspections

The Department regulates structural pest inspectors under RCW 15.58 and WAC 16-228. This memorandum sets out the Department's legal positions on several issues related to structural pest inspectors and wood destroying organism (WDO) inspections.

Licensing Requirement

RCW 15.58.445 states in part:

It is unlawful for any business to conduct complete wood destroying organism inspections without having obtained a company license from the director [of agriculture].

RCW 15.58.030(4) defines a complete WDO inspection as being:

[F]or the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure in Washington state.

The question has arisen as to when a WDO inspection is "part of the transfer, exchange, or refinancing" of a structure thus requiring that the business be licensed.

The Department's position is that an inspection is "part of the transfer, exchange, or refinancing" if the inspection report is used by the owner, buyer, seller, or other party in any manner in the course of the transfer, exchange, or refinance. Such use may be a formal use where the report is actually cited in real estate documents, or may be a more informal use for other purposes (e.g., a homeowner determining what needs to be repaired prior to putting a house on the market).

Whether an inspection is "part of the transfer, exchange, or refinancing" does not depend on when the inspection is performed. What matters is how the report is ultimately used. Thus, even if the inspection is called a "pre-sale" inspection, it may be "part of a transfer, exchange, or refinance" if the property ultimately is transferred, sold, or refinanced and the report is used without a new complete WDO inspection having been performed.

In the Department's experience, nearly all complete WDO inspections fall into the transfer-exchange-refinancing category. Any other type of WDO inspection (truly unconnected to a real estate transaction) is relatively rare. For this reason, the Department would be very doubtful of any claim that a business was exempt from licensing because its inspections were never part of the transfer, exchange, or refinancing of property.

Our interpretation of the law is consistent with the plain language of the law and, with the intent of the law in "protecting the immediate and future health and welfare of the people of the state." RCW 15.58.020.

In conclusion, a structural pest inspection business that performs regulated inspections without a license is subject to civil fines. Thus, the Department advises that any business doing WDO inspections become licensed in case the business is called upon to issue a report that someone decides to use in connection with a transfer, exchange, or refinancing of property.

Complete WDO Inspections and Reports

WAC 16-228-2035(1) requires that a person must perform a complete WDO inspection, meeting certain requirements, if the inspection is conducted “pursuant to the sale, exchange, or refinancing” of real property. For the same reasons explained above, the Department’s position is that this requirement applies if the property ultimately is sold, exchanged, or refinanced without a new WDO inspection having been performed.

Thus, the Department advises that the WDO inspection always meet the requirements of WAC 16-228-2005 through WAC 16-228-2045 unless the inspector is absolutely certain that the inspection is solely for any other type of WDO inspection (truly unconnected to a real estate transaction).

Unique Inspection Control Number (ICN)

RCW 15.58.450 states in part:

It is unlawful for any person to issue a wood destroying organism inspection report, prepared in conjunction with the transfer, exchange, or refinancing of any structure, without recording a unique inspection control number on the... report.

Again the Department’s position is that this requirement for a unique ICN applies if the property ultimately is sold, exchanged, or refinanced without a new WDO inspection having been performed. Thus, the Department advises that WDO inspection reports (other than for specific WDO inspections) always contain the ICN unless the inspector is absolutely certain that the inspection is solely for a purpose other than a transfer, exchange, or refinance of the property. The department also advises the inclusion of the following information when any other type of WDO inspection (truly unconnected to a real estate transaction) inspection is conducted. A statement explaining the restriction against the use of such inspection reports in a real estate transactions should stand out by having larger print than the main body of the report, be highlighted, underlined, or be in bold print. Such language should be included when any other type of WDO inspection (truly unconnected to a real estate transaction) is conducted. Be advised that if this type of inspection is ultimately used in the transfer, exchange, or refinancing of a structure, regardless of the original intent, the inspector may be held responsible for abiding by the laws and rules governing complete WDO inspections.

Specific WDO Inspections Prior To Treatments On Structures That Are For Sale

The Department acknowledges that WDO treatments are often performed on houses that being sold and that WAC 16-228-2060(1) requires that “A specific WDO inspection report must be completed in conjunction with any proposal or estimate for prevention or control of WDOs.” Clearly such inspections are not for the same purpose as complete WDO inspections. As long as such reports are clearly identified and used only as specific WDO inspection reports (see requirements under WAC 16-228-2060(2)), then no ICN is necessary, and it is not necessary to follow the inspection criteria for complete WDO inspections.